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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/491,747

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Brad S. Konia

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06/29/2006

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EXAMINER

KARMIS, STEFANOS

ART UNIT

PAPER NUMBER

3624

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/491,747	<b>Applicant(s)</b> KONIA, BRAD S.	
	<b>Examiner</b> Stefano Karmis	<b>Art Unit</b> 3624	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22, 26 and 27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22, 26 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The following communication is in response to Applicant's amendment filed 19 April 2006.

#### ***Status of Claims***

2. Claims 1, 11, 26 and 27 are previously presented. Claims 2-10 and 12-22 are originally filed. Claims 23 is withdrawn. Claims 24 and 25 are cancelled. Therefore claims 1-22, 26 and 27 are currently pending.

#### ***Response to Arguments***

3. Applicant's arguments filed 19 April 2006 have been fully considered but they are not persuasive as discussed below.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-3, 9, 11-13, 21, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al. (hereinafter Fisher) U.S. Patent 5,835,896 in view of Brett U.S. Patent 6,907,405 in further view of Davis et al. (hereinafter Davis) U.S. Patent 6,269,361.

Claims 1-3, 9, 11-13, 21, 26 and 27 were rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al. (hereinafter Fisher) U.S. Patent 5,835,896 in view of Brett U.S. Patent 6,907,405 in further view of Davis et al. (hereinafter Davis) U.S. Patent 6,269,361 as stated in the previous office action mailed 19 December 2005. Regarding claim 1, Applicant submits that Applicant has established his invention was dated before July 1, 1999. However, the 37 CFR § 1.131 Declaration submitted on 26 August 2005 established the invention was completed prior to December 23, 1999. There is no declaration stating that Applicant established his invention prior to July 1, 1999.

The rejection of claim 1 under 35 U.S.C. 103(a) relies on the teachings of Brett, and the related applications of 08/862,547 (U.S. Patent 6,023,685) and provision application 60/018,211. In these related applications, Brett teaches automated tracking of bids during an auction in real time by updating the bid price. Applicant's argument regarding claim 1 state that the related applications for Brett do not teach an automated auction system that automatically increments a first bid to a value exceeding the second bid if the first bid does not exceed the second bid. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re*

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*Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The automated auctioning teachings relied upon by the Examiner in the previous office action were taught by Fisher (column 9, lines 17-35). The Examiner did not rely on the teachings of Brett for the automated incrementing of bids and consequently the argument presented by the Applicant is not persuasive. Therefore claim 1, remains rejected and Applicant's request for allowance is respectfully declined. Claim 11 is substantially similar to claim 1 and therefore stands rejected under the same reasoning as claim 1. Dependent claims 2-10, 12-22, 26 and 27 remain rejected as stated in the previous office action, mailed 19 December 2005. Therefore claims 1-22, 26 and 27 are rejected and Applicant's request for allowance is respectfully declined.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefano Karmis whose telephone number is (571) 272-6744. The examiner can normally be reached on M-F: 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Respectfully Submitted  
Stefano Karmis  
26 June 2006



HANI M. KAZIMI  
PRIMARY EXAMINER